Supreme Court, U.S.
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In The

Supreme Court of the United States

LIGHTHOUSE DISASTER RELIEF, et al.,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does the mere filing of a complaint that alleges a debt is owed entitle the United States to a pre-judgment garnishment under the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001, et seq.?

PARTIES TO THE PROCEEDING

The parties to the proceeding are:

LIGHTHOUSE DISASTER RELIEF, a Virginia corporation; **GARY LEE HELDRETH**, an individual, a citizen of the Commonwealth of Virginia, and co-owner of **LIGHTHOUSE DISASTER RELIEF**; and **KERRY LYNN FARMER**, an individual, a citizen of the Commonwealth of Virginia, and co-owner of **LIGHTHOUSE DISASTER RELIEF**;

UNITED STATES OF AMERICA, the federal government.

CORPORATE DISCLOSURE

Lighthouse Disaster Relief is a Virginia company, wholly owned by Gary Lee Heldreth and Kerry Lynn Farmer. None of its shares are held by a publicly traded company.

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RULE OF THE UNITED STATES SUPREME COURT

Rule 13.3 1

OPINIONS BELOW

The Court of Appeals for the Fifth Circuit denied Lighthouse's Petition for Extraordinary Writ on October 17, 2006. Appendix A-1.

BASIS FOR SUPREME COURT JURISDICTION

Lighthouse seeks review of that judgment by a writ of certiorari. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the judgment of a federal court of appeals by writ of certiorari.

The present petition is timely filed under 28 U.S.C. § 2101(c) and under Rule 13.3 of this Court.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 3001 provides as follows:

(a) In general. – Except as provided in subsection (b), the chapter provides the exclusive civil procedures for the United States –

(1) to recover a judgment on a debt; or

(2) to obtain, before judgment on a claim for a debt, a remedy in connection with such claim.

(b) Limitation. – To the extent that another Federal law specifies procedures for recovering on a claim or a judgment for a debt arising under such law, those procedures shall apply to such claim or judgment to the

extent those procedures are inconsistent with this chapter.

(c) Amounts owing other than debts. – This chapter shall not apply with respect to an amount owing that is not a debt or to a claim for an amount owing that is not a debt.

28 U.S.C. § 3002 provides, in relevant part:

(3) "Debt" means –

(A) an amount that is owing to the United States on account of a direct loan, or loan insured or guaranteed, by the United States; or

(B) an amount that is owing to the United States on account of a fee, duty, lease, rent, service, sale of real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond forfeiture, reimbursement, recovery of a cost incurred by the United States, or other source of indebtedness to the United States, but that is not owing under the terms of a contract originally entered into by only persons other than the United States;

and includes any amount owing to the United States for the benefit of an Indian tribe or individual Indian, but excludes any amount to which the United States is entitled under section 3011(a).

STATEMENT OF THE CASE

This case arises from a contract dispute between the United States and Lighthouse Disaster Relief, et al. Under the contract, the Government hired the defendants to provide food and shelter in southeast Louisiana for Hurricane Katrina relief workers.

After arbitrarily terminating the contract, the United States filed suit against Lighthouse[1], claiming that the relief company (1) failed to meet its contractual obligations; (2) was unjustly enriched; and (3) was mistakenly paid. The Government later amended its complaint to demand that the defendants must also reimburse it under the False Claims Act. The Government seeks restitution, damages, and the return of excess payments allegedly paid to Lighthouse. Appendix A-21.

With its complaint, the United States applied for an *ex parte* order to garnish Lighthouse's assets under the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001, et seq. Judge James Brady of the United States Middle District Court of Louisiana granted the government's request on February 27, 2006. Appendix A-19.

In response, Lighthouse filed a motion to dissolve the garnishment writ. The defendants argued that the Federal Debt Collection Procedure Act does not allow a pre-judgment garnishment because the United States is not seeking recovery of a "debt" as defined by the statute. Lighthouse further claimed that no debt was owing to the

[1] Defendants Gary Lee Heldreth and Kerry Lynn Farmer were sued individually and as agents for Lighthouse.

United States at the time the garnishment was issued. Appendix A-15.

After a hearing on July 10, 2006, Judge Brady orally denied Lighthouse's motion to quash the writ. In his written reasons, Judge Brady ruled that the mere assertion by the United States that it is owed a debt is sufficient to warrant a pre-judgment writ under the FDCPA. Appendix A-6.

Lighthouse gave notice in open court of its intent to seek an interlocutory appeal and followed with a written motion that Judge Brady denied on August 25, 2006. Appendix A-2. The defendants then filed a petition for extraordinary writ under the All Writs Act, 28 U.S.C. § 1651 to the United States Fifth Circuit Court of Appeals. *In re Powerhouse Licensing, LLC,* 441 F.3d 467, 471 (6th Cir. 2006). That application was denied on October 17, 2006. Appendix A-1.

ARGUMENT

A pre-judgment garnishment writ is not proper because the mere filing of a claim by the United States does not create a debt under the Federal Debt Collection Procedure Act.

The right to a pre-judgment remedy under the FDCPA is predicated solely upon the defendant owing money to the United States. At this time, Lighthouse does not owe the Government; the United States has merely filed a complaint that alleges it does.

By its plain meaning, the FDCPA allows the Government to obtain before judgment an attachment, garnishment, or sequestration of a defendant's assets only when a debt exists. "This chapter shall not apply with respect to an amount owing that is not a debt or to a claim for an amount owing that is not a debt." 28 U.S.C. § 3001(c).

The FDCPA defines a "debt" as:

> (A) an amount that is owing to the United States on account of a direct loan, or loan insured or guaranteed, by the United States; or
>
> (B) an amount that is owing to the United States on account of a fee, duty, lease, rent, service, sale or real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond forfeiture, reimbursement, recovery of a cost incurred by the United States, or other source of indebtedness to the United States, but that is not owing under the terms of a contract originally entered into by only persons other than the United States . . . 28 U.S.C. § 3002(3) (1990).

Congress adopted this definition from the United States Bankruptcy Code that defines a debt as liability on a claim. *See Schueler v. Rayjas Enterprises, Inc.*, 847 F.Supp. 1147 (S.D.N.Y. 1994), App. A at 1152 (Government's statement concerning § 1961, 100th Cong., 2d Sess., 1987); 11 U.S.C. § 101(12). Under this definition, a debt is incurred when the debtor becomes legally bound to pay. *In re Martin*, 184 B.R. 985, 992 (M.D. Ala. 1995), *aff'd sub nom., ALFA Mut. Fire Insurance Co. v. Memory*, 101 F.3d 708 (11th Cir. 1996) (Table); *In re Antonino*, 241 B.R. 883, 888 (N.D. Ill. 1999).

Until Lighthouse becomes legally bound to pay, no debt exists. Until then, the United States is merely asserting a claim with the hope of establishing a debt. The defendants are not debtors simply because they are persons who may be potentially liable for a debt.

Congress made clear its intent that the FDCPA establishes "the exclusive civil procedures for the United States" for collecting debts owed under federal loans, federal taxes, and civil penalties and criminal fines imposed under federal laws and regulations. Congress adopted the procedure because it was upset that "***after*** a civil money judgment is rendered or a Federal criminal fine imposed, the United States must look to the law of the state where a debtor resides to determine what collection duties are available to collect the debts owed to the Federal Government." (emphasis added). *See Schueler v. Rayjas Enterprises, Inc.*, 847 F.Supp. 1147 (S.D.N.Y. 1994), App. A at 1152 (Government's statement concerning § 1961, 100th Cong., 2d Sess., 1987). Through the FDCPA Congress adopted an exclusive federal procedure for ***collecting*** debts owed post-judgment; Congress did not intend to freeze assets while attempting to establish that a debt exists.

A. The FDCPA does not apply unless a debt is owing.

Unless a debt exists when the complaint is filed, a court cannot grant the United States the extraordinary remedies of attachment, garnishment, or sequestration.

The only other court in the United States that has addressed this issue agrees with that position. In *United States v. Cap Quality Care, Inc.*, 400 F.Supp.2d 295 (D.

Me. 2005), the United States alleged multiple violations of statutes that related to controlled substances and the federal Medicaid program. The Government contended that the combination of statutory penalties, common-law remedies, and the disgorgement of illegal profits amounted to a "likely recovery" exceeding $500,000. *Id.* at 289-99.

The Government also alleged that paying attorney's fees constituted a waste of the defendant's property that would hinder or delay the ability of the United States to recover. The government further argued that paying of the attorney's fees created a substantial danger that the defendant's property would be "lost, concealed, materially injured or damage[d], or mismanaged." *Id.*

The trial court denied the United States' request for a pre-judgment remedy, ruling that the mere assertion by the Government of a claim for a debt does not constitute a debt under the FDCPA:

> The initial problem with the Government's position is that the FDCPA definition of "debt" is written in the present tense. A "debt" to which the Act applies is one "that is owing." The Government concedes that the defendant "is not currently liable" for a debt, but contends that it is nonetheless a debtor because the Government has asserted "a claim for a debt" against it. This interpretation would read the definition of "debt" out of the Act and, as the defendant observes . . . would allow the federal Government to seek pre-judgment remedies in virtually every civil action it might file. *Id.*

The same situation is present here; the result should be the same. Because the Government has not yet demonstrated that Lighthouse owes a debt, it cannot take advantage of the FDCPA's pre-judgment remedies. Under both the statute and the court's interpretation in *Cap Quality Care, Inc.*, the debt must precede the remedy.

The case cited by Judge James Brady – *Board of Governors of the Federal Reserve System v. Pharoan*, 169 F.3d 110 (2nd Cir. 1999) – illustrates this point. In *Pharoan*, the defendant appealed the award of a ten-percent surcharge for attorneys' costs awarded to the United States in conjunction with a $37 million civil penalty assessed by the Board of Governors for violation of federal laws governing bank holding companies. *Id.* **After** the assessment of the civil penalty by the Board of Governors, the United States sought to freeze the defendant's assets while the defendant appealed the order.

The *Pharoan* court held that because the administrative agency serves as a trial court and its order is analogous to the final decision of a district court, the agency's ruling established a debt, which afforded the United States the right to freeze the defendant's assets pending his appeal. This holding demonstrates that the FDCPA applies to an established financial obligation. The ruling meets the requirement that the debt must exist prior to the commencement of the Government's complaint, fulfilling the debtor-creditor relationship focus of the FDCPA. *See also Federal Trade Commission v. National Business Consultants, Inc.*, 376 F.3d 317 (5th Cir. 2004), *cert. denied sub nom., Namer v. F.T.C.*, 544 U.S. 904 (2005) (an unpaid fine owed to the F.T.C. is an amount that is owing to the United States, thus the remedies of the FDCPA are available to the Government).

The United States stands in no different capacity than any other plaintiff. The filing of this complaint against Lighthouse cannot manifest indebtedness just because the plaintiff is the United States Government. While the Government has made allegations against Lighthouse by choosing causes of action delineated in 28 U.S.C. § 3002(3) to secure pre-judgment remedies, it must still show that a debt exists, not merely that a debt is created when a complaint is filed. The FDCPA and its accompanying pre-judgment remedies are available to the United States only when a debt exists and when that debt is unpaid. Until then, a pre-judgment garnishment is not proper.

CONCLUSION

Neither this Court nor any appellate court has held that the United States can obtain a pre-judgment remedy under the FDCPA by merely filing a complaint that alleges a debt. By granting this writ of certiorari, this Court can state with clarity whether the FDCPA permits a pre-judgment remedy upon the mere assertion that a debt is owed, or whether the FDCPA requires a debt be presently owing.

Respectfully submitted,

T. STEPHEN BABCOCK
MARK D. PLAISANCE

Attorneys for Petitioners, Lighthouse Disaster Relief, Gary Lee Heldreth and Kerry Lynn Farmer

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-31010

In Re: LIGHTHOUSE DISASTER RELIEF;
GARY LEE HELDRETH; KERRY LYNN FARMER

Petitioners

Petition for Extraordinary Writ to the United States
District Court for the
Middle District of Louisiana, Baton Rouge

(Filed Oct. 17, 2006)

Before SMITH, WIENER, and OWEN, Circuit Judges

PER CURIAM:

IT IS ORDERED that the petition for extraordinary writ is [DENIED.]

[/s/ JW 10/6/06 JS PRO]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA CIVIL ACTION

VERSUS NO. 06-161-JJB

LIGHTHOUSE DISASTER RELIEF, ET AL.

RULING ON MOTION FOR INTERLOCUTORY APPEAL

(Filed Aug. 25, 2006)

This matter is before the court on a motion by defendants for an order granting them an interlocutory appeal. The motion is opposed. There is no need for oral argument.

Under 28 U.S.C. §1292(b), to allow an interlocutory appeal the court must find: (1) that a controlling question of law is involved; (2) as to which "there is substantial ground for difference of opinion," and (3) that an immediate appeal from the order may materially advance the ultimate termination of the litigation.

The court has carefully considered the briefs and agrees with the government that defendants have failed to demonstrate that an interlocutory appeal should be allowed in this case.

Accordingly, the motion for certification under §1292 is hereby DENIED.

Baton Rouge, Louisiana, August 25th 2006.

/s/ J Brady
James J. Brady, Judge
Middle District of Louisiana

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,	
Plaintiff	
versus	**Civil Action No. 06-161-JJB-CN**
LIGHTHOUSE DISASTER RELIEF, GARY LEE HELDRETH, AND KERRY LYNN FARMER	
Defendants	

MOTION FOR ORDER OF INTERLOCUTORY APPEAL

(Filed Jul. 13, 2006)

Defendants, **Lighthouse Disaster Relief, Gary Lee Heldreth** and **Kerry Lynn Farmer**, request the court issue an order granting them an interlocutory appeal under USCA 28§1292 of its July 10, 2006 denial of their Motion to Quash Pre-Judgment Garnishment in that

(a) the questions presented to the court – namely whether the United States is entitled to a pre-judgment garnishment of defendants' assets in the absence of a defined debt or that the FDCPA deprives the defendants of due process – are controlling issues of law;

(b) there is "substantial ground for difference of opinion" on that question, especially since the court decline [sic] to follow jurisprudence that requires a debt to exist before the FDCPA applies; and

(c) an immediate appeal from the order may materially advance the ultimate termination of the litigation.

Wherefore, defendants pray this court grant an Order of Interlocutory Appeal as permitted by USCA 28§1292.

Respectfully submitted:

BABCOCK LAW FIRM, LLC

/s/ Stephen Babcock

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CERTIFICATE OF SERVICE

I hereby certify that on this 12 day of July, 2006, I have served a copy of the above and foregoing Pleading on all counsel of record for all parties to this proceeding, by mailing the same by United States mail, properly addressed and first class postage prepaid.

/s/ Stephen Babcock
STEPHEN BABCOCK

Our file number: 0242-0001-06

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA CIVIL ACTION

VERSUS NO. 06-161-D-M2

LIGHTHOUSE DISASTER RELIEF,
GARY LEE HELDRETH, and
KERRY LYNN FARMER

****

RULING ON MOTIONS TO QUASH PRE-JUDGMENT GARNISHMENT

(Filed Jul. 11, 2006)

This matter is before the court on a motion (doc. 25) to quash the garnishment of Defendants' bank accounts that the Court granted on February 27, 2006. The United States has filed an opposition (doc. 30), and Defendants have filed a reply (doc. 33). The United States has also filed additional briefing. (doc. 40). A hearing was held on July 10, 2006.

Defendants received a $5.2 million contract from FEMA to provide food and shelter for thousands of relief workers following Hurricane Katrina. After paying the full contract price, the United States sued Defendants under the False Claims Act, alleging breach of contract, unjust enrichment, and payment by mistake. The United States petitioned the Court under the Federal Debt Collection Practices Act ("FDCPA"), 28 U.S.C. § 3001 *et seq.,* to garnish Defendants' bank accounts to prevent Defendants from squandering the funds. The Court granted the United States' garnishment application on February 27, 2006, and Defendants have moved for the Court to quash the garnishment. A hearing was scheduled for May 19, 2006, but before that hearing was convened, Defendants

offered to grant the United States priority liens in all remaining property in exchange for the release of $100,000 for legal fees and some living expenses. The parties have since reached an impasse on the final agreement, however, so the hearing was reconvened on July 10, 2006.

In support of their motion, Defendants argue that the FDCPA unconstitutionally deprives Defendants of due process by allowing the United States to garnish Defendants' assets before notice and a hearing. Defendants also argue that the FDCPA can only be used to garnish money owed under an existing debt, and that Defendants do not owe any "debt" to the United States. Defendants also make two other statutory arguments: that transfers of funds between Defendants are not "dispositions" of assets under the FDCPA and thus can not be garnished, and that the "earnings" in their accounts can not be garnished under the FDCPA.

The FDCPA provides, in relevant part, as follows:

> **§ 3001. Applicability of chapter**
>
> **(a) In General** – Except as provided in subsection (b), the chapter provides the exclusive civil procedures for the United States –
>
> **(1)** to recover a judgment on a debt; or
>
> **(2)** to obtain, before judgment on a claim for a debt, a remedy in connection with such claim.
>
> . . . .
>
> **(c) Amount owning** [sic] **other than debts.** – This chapter shall not apply with respect to an amount owing that is not a

debt or to a claim for an amount owing that is not a debt.

§ 3002. Definitions

As used in this chapter:

. . . .

(3) "Debt" means –

(A) an amount that is owing to the United States on account of a direct loan, or loan insured or guaranteed, by the United States; or

(B) an amount that is owing to the United States on account of a fee, duty, lease, rent, service, sale of real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond forfeiture, reimbursement, recovery of a cost incurred by the United States, or other source of indebtedness to the United States, but that is not owing under the terms of a contract originally entered into by only persons other than the United States;

. . . .

(11) "Prejudgment remedy" means the remedy of attachment, receivership, garnishment, or sequestration authorized by this chapter to be granted before judgment on the merits of a claim for a debt.

. . . .

§ 3101. Prejudgment remedies

(a) Application. – (1) The United States may, in a proceeding in conjunction with the complaint or at any time after the filing of a civil action on

a claim for a debt, make application under oath to a court to issue any prejudgment remedy. . . .

(b) Grounds.– Subject to section 3102, 3103, 3104, or 3105, a prejudgment remedy may be granted by any court if the United States shows reasonable cause to believe that –

(1) the debtor –

. . . .

(B) has or is about to assign, dispose, remove, conceal, ill treat, waste, or destroy property with the effect of hindering, delaying, or defrauding the United States;

. . . .

(c) Affidavit. – (1) The application under subsection (a) shall include an affidavit establishing with particularity to the court's satisfaction facts supporting the probable validity of the claim for a debt and the right of the United States to recover what is demanded in the application.

. . . .

(d) Notice and hearing – . . . .

(2) By requesting, at any time before judgment on the claim for a debt, the court to hold a hearing, the debtor may move to quash the order granting such remedy. The court shall hold a hearing on such motion as soon as practicable, or, if requested by the debtor, within 5 days after receiving the request for a hearing or as soon thereafter as possible. The issues at such hearing shall be limited to –

(A) the probable validity of the claim for the debt for which such remedy was

granted and of any defense or claim of exemption asserted by such person;

(B) compliance with any statutory requirement for the issuance of the prejudgment remedy granted;

(C) the existence of any ground set forth in subsection (b); and

(D) the inadequacy of alternative remedies (if any) to protect the interests of the United States.

(e) Issuance of writ – On the court's determination that the requirements of subsections (a), (b), and (c) have been met, the court shall issue all process sufficient to put into effect the prejudgment remedy sought.

§ 3104. Garnishment

(a) In general. – If the requirements of section 3101 are satisfied, a court may issue a writ of garnishment against property (excluding earnings) in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor in order to satisfy a claim for a debt. . . .

Defendants rely primarily on their argument that they owe no "debt" to the United States, and that the United States can thus not use the FDCPA to attach their assets. The Court rejects that argument.

First, the FDCPA expressly contemplates that it applies "before judgment" on a claim for a debt. Sec. 3001(a)(2). A section of the FDCPA, § 3101, is entitled "Prejudgment remedies." Several other sections spell out procedures for various prejudgment remedies under the FDCPA, *see* §§ 3102-3105, including garnishment, § 3104.

"Prejudgment remedy" is specifically defined to include garnishment "before judgment on the merits of a claim for a debt." Sec. 3002(11).

While the expression "claim for a debt" is not expressly defined by the statute, "claim," in its ordinary sense, means a right that is *asserted,* not one that has been agreed upon or that has already been determined in a judicial proceeding. *See* Black's Law Dictionary 264 (8th ed. 2004) (defining "claim" as, *inter alia*, "[a] demand for money, property, or a legal remedy to which one asserts a right"); *see also id.* at 265 (noting that in the bankruptcy context, "[i]t does not matter whether the right has been reduced to judgment or whether it is liquidated or unliquidated . . . disputed or undisputed. . . ."). Given that the term "claim" is not specially defined in the FDCPA, even though several other key words are defined, sound principles of statutory construction require that the Court use the ordinary meaning of "claim" and not read a modifier such as "liquidated" into the statute, *See Perrin v. United States,* 444 U.S. 37, 42, 100 S. Ct. 311, 62 L. Ed. 2d 199 (1979) ("A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning."). Thus, the FDCPA, by its terms, applies when the United States asserts that a "debt" is owed to it and it seeks a related prejudgment remedy. Sec. 3001(a)(2). "Debt" is the *object* of the statutory phrase, not the subject. The sentence "The United States says that you owe a debt" is a valid statement of fact as long as the United States does, in fact, make such a claim. It matters not whether the "debt" to which the United States refers actually exists; the sentence remains a valid identification of what the United States says.

Further, a "debt" is defined by the statute to include "an amount that is owing to the United States on account of a . . . duty . . . overpayment, fine, . . . penalty, restitution, damages, . . . recovery of a cost incurred by the United States, or other source of indebtedness to the United States . . . ." Sec. 3002(3)(B). The deconstructed versions of § 3001(a)(2) and § 3002(3)(B) read *in pari materia* result in the following construction:

> The FDCPA applies when the United States claims or asserts that there is an amount owing to it on account of [any of the reasons listed in § 3002(3)(B)] and seeks a related prejudgment remedy.

From that construction, it is plain that in the context of prejudgment remedies, there is no need for the "debt" to be liquidated or otherwise preexisting.[1] As the Second Circuit has found, "Congress clearly intended to authorize the use of [the FDCPA's prejudgment remedies] prior to a formal determination that such amount must be paid to the United States by a certain date." *Board of Governors of Fed. Reserve Sys. v. Pharaon*, 169 F.3d 110, 114 (2d Cir. 1999).[2] Thus, Defendants' primary statutory argument for quashing the order of garnishment fails.

---

[1] Defendants repeatedly assert that a "debt" under the FDCPA must be pre-existing. But even assuming *arguendo* the truth of that assertion, this would not render the FDCPA inapplicable. There is no requirement that a debt be adjudicated before it exists. For example, at the July 10 hearing, Defendants referred to the student loan context as a situation where the FDCPA would apply. But when a student borrows money from the United States, a debt normally exists from that moment. This is true even before a court pronounces judgment.

[2] Defendants rely heavily on *United States v. Cap Quality Care, Inc.*, 400 F. Supp. 2d 295 (D. Me. 2005) for the contrary proposition. In

(Continued on following page)

Defendants remaining statutory arguments fare no better. Defendants argue that any transfers of funds between Defendants Heldreth and Farmer and their corporation, Lighthouse, are not dispositions of assets as described by provisions such as § 3101(b)(1)(B). However, even if that is true, the United States alleges that some of Defendants' transfers were to non-defendants, such as family members. Those transfers, to the extent that they exist, certainly constitute dispositions, and they also provide evidence that Defendants might make additional transfers – which is precisely what the garnishment is intended to prevent.

As to Defendants' argument that the garnished bank accounts represent "earnings," which can not be garnished under § 3104(a), the Court agrees with the United States that "earnings" is limited by § 3002(6) to "personal services" and thus does not include the contract proceeds and business profits that are the subject of this garnishment.

Finally, the Court addresses Defendants' constitutional argument. Under the familiar framework set forth in *Mathews v. Eldridge,* 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18 (1975) for analyzing due process claims, courts consider the following three factors:

Cap Quality Care, the magistrate judge found that the government's mere filing of a claim for fines and penalties did not justify the imposition of prejudgment remedies. This opinion appears to assume that for a debt to be "owing," it must be formally "adjudicated," and thus supports Defendants' premise that the FDCPA requires an already-adjudicated debt. *Id.* at 299. To the extent that this decision supports Defendants' position, the Court declines to adopt it, finding it to be an incorrect statement of the law.

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

As the United States points out, the FDCPA has safeguards that minimize the risk of an erroneous deprivation of property. The United States must establish "with particularity to the court's satisfaction facts supporting the probable validity of the claim. . . . " Sec. 3101(c)(1). The debtor can move to quash the prejudgment remedy and is generally entitled to a hearing within five days after requesting one. Sec. 3101(d)(2). The FDCPA's prejudgment garnishment procedures have been held to comport with due process, given the requisite exigent circumstances. *NLRB v. E.D.P. Med. Computer Sys.*, 6 F.3d 951, 956 (2d Cir. 1993). This Court declines to be the first court since the inception of the FDCPA to hold that its prejudgment remedies unconstitutionally deprive defendants of procedural due process.

For the foregoing reasons, the Court **DENIES** Defendants' motion to quash (doc. 25).

Baton Rouge, Louisiana, July 11th, 2006.

/s/ James J. Brady
JAMES J. BRADY, JUDGE
MIDDLE DISTRICT
OF LOUISIANA

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,	)	
Plaintiff	)	
versus	)	
LIGHTHOUSE DISASTER RELIEF, GARY LEE HELDRETH, AND KERRY LYNN FARMER	)	**Civil Action No. 06-161-JJB-CN**
Defendants	)	

REQUEST FOR HEARING

Defendants, Lighthouse Disaster Relief Gary Lee Heldreth, and Kerry Lynn Farmer request a hearing on the United States' pre-judgment garnishment. For the reasons stated in the attached memorandum, the defendants contend that the Federal Debt Collection Procedure Act which allows a pre-judgment garnishment, is an unconstitutional deprivation of their rights to due process; no debt is owed to the United States, therefore the FDCPA does not apply; the transfer of funds between the defendants is not a disposition of assets; and the United States has seized the defendants earnings; earnings cannot be garnished under the FDCPA.

Wherefore, defendants pray for a hearing on the United States' pre-judgment garnishment and thereafter a judgment declaring the Federal Debt Collection Procedure

Act unconstitutional or alternatively a judgment quashing the writ as improvidently granted.

Respectfully submitted:

BABCOCK LAW FIRM, LLC

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been mailed this date, postage prepaid, to all counsel of record.

Baton Rouge, La., this 1st day of May, 2006.

/s/ Stephen Babcock
STEPHEN BABCOCK

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

VERSUS

LIGHTHOUSE DISASTER RELIEF, ET AL.

CIVIL ACTION

NO. 06-161-JJB-CN

ORDER

(Filed May 10, 2006)

Considering the foregoing motion for hearing and having consulted with counsel of record;

IT IS ORDERED that an **Evidentiary Hearing/Oral Argument** be held on the motion to quash pre-judgment garnishment on Friday, **May 19, 2006, at 9:30 a.m.** in Courtroom 1.

IT IS FURTHER ORDERED that the government file a **response on or before May 12, 2006**; and that defendants file any **reply on or before May 16, 2006**.

Baton Rouge, Louisiana, May 10th 2006.

/s/ James J. Brady
JAMES J. BRADY, JUDGE
MIDDLE DISTRICT OF
LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES
OF AMERICA

VERSUS

LIGHTHOUSE DISASTER
RELIEF, ET AL.

CIVIL ACTION
NO. 06-161-JJB-CN

NOTICE AND ORDER

(Filed June 29, 2006)

A telephone conference was held this date with James Nelson and Jordan Strauss appearing for the United States and Mark Plaisance and Timothy Stephen Babcock appearing for defendants.

The court reset the evidentiary hearing on Monday, July 10, 2006, at 9:30 a.m. in Courtroom One. The parties may file additional briefs on or before Wednesday, July 5, 2006.

Baton Rouge, Louisiana, June 29, 2006.

/s/ James J. Brady
JAMES J. BRADY,
DISTRICT JUDGE
MIDDLE DISTRICT
OF LOUISIANA

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

versus

CIVIL ACTION NO. **06-161**

LIGHTHOUSE DISASTER RELIEF,
GARY LEE HELDRETH, and
KERRY LYNN FARMER

PRE-JUDGMENT WRIT OF CONTINUING GARNISHMENT

(Filed Feb. 27, 2006)

TO: Bedford Federal Savings Bank
Subsidiary of First National Bank
and its successors and assigns
c/o Legal Department or Any Officer
105 Arbor Drive
Christiansburg, VA 24068

This matter is before the Court on the application for a Prejudgment Writ of Garnishment against the property of Kerry Lynn Farmer, Defendant, which was filed by the United States of America in conjunction with a complaint to recover a debt in the total amount of $2,421,099.97. The property the United States seeks to garnish is specifically described as follows:

> All monies, sums and funds in Account Number 571103035, in the name of Kerry Lynn Farmer, located at Bedford Federal Savings Bank, Bedford, Virginia Branch.

Whereupon the Court, having considered the application for a prejudgment writ of garnishment against the property of the Defendant, and the supporting affidavits

and exhibits, and being duly advised in the premises, now finds that the requirements of 28 U.S.C. §§ 3101 and 3104 are satisfied. Accordingly,

IT IS ORDERED THAT a writ of prejudgment garnishment shall, and hereby does, issue against the afore-described property of the Defendant.

IT IS FURTHER ORDERED THAT the garnishment shall not exceed property reasonably equivalent in value of the aggregate amount of the debt, costs and interest.

IT IS FURTHER ORDERED THAT the garnishee, Bedford Federal Savings Bank, shall retain and hold the afore described property subject to this writ, and shall not disburse or otherwise deliver any of such property to the Defendant or any others, until further order of the Court.

IT IS SO ORDERED.

Executed on this [27th] day of [February], 2006. [11:01 A.M. CST]

/s/ James J. Brady
JUDGE
UNITED STATES
DISTRICT COURT
MIDDLE DISTRICT
OF LOUISIANA
[JAMES J. BRADY]

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA, Plaintiff, v. LIGHTHOUSE DISASTER RELIEF, GARY LEE HELDRETH, and KERRY LYNN FARMER, Defendants.	)	Civil Action No. 06-161-JJB-CN

COMPLAINT WITH JURY DEMAND

(Filed Feb. 27, 2006)

The United States of America ("United States") alleges as follows:

INTRODUCTION

1. This is a civil action brought by plaintiff, the United States, to recover damages and restitution in connection with an agreement between the Defendants and the United States to construct a base camp for Hurricane Katrina Emergency Workers.

JURISDICTION AND VENUE

2. This action is brought by the United States for damages and equitable relief under the common law. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1345.

3. This Court has personal jurisdiction over the defendants because they entered into a contract in this district and because the acts at issue in this case occurred within the jurisdiction. Venue is proper in this district under 28 U.S.C. §§ 1391(b) because a substantial part of the events or omissions occurred in this judicial district.

THE PARTIES

4. Plaintiff is the United States. At all times material to this civil action, the United States Department of Homeland Security ("DHS") was an agency and instrumentality of the United States, the General Services Administration ("GSA") was an agency and instrumentality of the United States, and the Federal Emergency Management Agency ("FEMA") was an agency and instrumentality of the United States.

5. Defendant Lighthouse Disaster Relief, upon information and belief a Virginia company with addresses located in West Virginia.

6. At all times material herein, Defendant Lighthouse Disaster Relief acted through its agents, Gary Heldreth and Kerry Farmer.

7. Defendant Gary Lee Heldreth is a citizen of the Commonwealth of Virginia and co-owner of Lighthouse Disaster Relief.

8. Defendant Kerry Lynn Farmer is a citizen of the Commonwealth of Virginia and co-owner of Lighthouse Disaster Relief.

GENERAL ALLEGATIONS

A. Hurricane Katrina

9. On August 29, 2005, Hurricane Katrina made landfall in Southeastern Louisiana and proceeded to devastate the Gulf Coast of the United States.

10. In order to begin addressing the needs of a devastated Gulf Coast, first-responders (fire-fighters, law enforcement, and health care providers) from all over the United States traveled to Louisiana to aid in the relief effort.

11. After receiving a request from the Louisiana Fire Task Force, FEMA, in its role as central coordinator of the relief effort, sought to procure food and shelter for the first-responders.

12. Among the many requirements of the first-responders was a base camp capable of supporting 1,000 emergency workers. GSA and FEMA sought bidders for the immediate construction of this base camp in mid-September, and received two proposals.

B. The Contract Award

13. Prior to Hurricane Katrina, Defendant Light-house Disaster Relief and its co-owners had no experience providing support to disaster relief workers.

14. Despite this lack of experience, Defendants held themselves out to GSA and FEMA as able to provide a base camp for 1,000 relief workers which would be fully operational within 48 hours of the Contract being awarded.

15. FEMA relied on Defendants' bid documentation and on Defendants' representations that they could begin their performance within 48 hours, and thus choose Defendant Lighthouse Disaster Relief over another company which had informed FEMA that it could not begin performance of the contract as quickly.

16. Relying on information provided by Defendants regarding pricing and profits, GSA and FEMA accepted Defendants' bid to construct a base camp in St. Bernard Parish capable of housing and feeding 1,000 first-responders for thirty days.

17. GSA contracting officers issued Purchase Order number HSFE06-05-P-6389 ("the Contract") on September 18, 2005, setting forth the responsibilities of Defendants and specifying that the Contract price would be paid by FEMA.

18. Section 17 of the Contract specified that Defendants would provide:

> Supplies and services to run a fully operational 1000 person base camp at 1800 Parls Road Chalmette, LA in St. Bernard's Parish – in direct support of disaster relief efforts. Base camp will include 75 tents including Air Conditioning/ Heating, flooring, bedding, linens, showers/ restroom/laundry facilities, 2 kitchens, 3 meals a day per person, and dome recreation hall.

19. Section 17 of the Contract also provided that Defendants would provide "all fuel, water, trash and gray water removal, and personnel to operate and maintain base camp."

20. Section 17 of the Contract specified a period of performance from September 20, 2005, through October 19, 2005.

21. Section 17 of the Contract expressly anticipated that Defendants would submit weekly summary invoices, including the name of the "supplier, purchase order number, date, itemized listing of rental fee by day, and total dollar value," representing expenses for work actually performed. Defendants had requested that it be paid the entire contract price at the beginning of the Contract, but GSA refused to permit payment for work not yet performed.

22. The Contract was entered into between GSA and the Defendants on September 18, 2005, and set performance to begin within 48 hours.

C. The Defendants' Failure to Perform

23. The Defendants did not fulfill their promises under the Contract.

24. Approximately two weeks after the Contract was entered into, Defendants were not performing any of the Contract's requirements. Construction of the base camp was not complete and the camp was unable to support any emergency workers.

25. Upon information and belief, the base camp was not capable of receiving any residents until, at the earliest, the evening of October 2, 2005, or the morning of October 3, 2005.

26. Upon information and belief, FEMA ground personnel had to provide firefighters as volunteer labor to help Defendants compete construction of the camp.

27. Even with this assistance, the base camp was not sufficient to perform the Contract. While the Contract provided for a camp able to house and feed 1,000 emergency workers, the camp was never able to support more than 400 people.

D. Mistaken Payment

28. Rather than comply with the language of the Contract and their express instructions from GSA, on September 20, 2005, two days after the Contract was issued, and before any work had been done, Defendants submitted an invoice for $5,209,000.00, the entire Contract price, to FEMA.

29. The Invoice did not conform with the requirements of the contract – specifically, it did not list suppliers, purchase order numbers, dates, or amounts paid. The Invoice billed the United States for amounts that included work that had not yet been performed at the time the invoice was submitted, and which was in fact never performed by the Defendants.

30. Deluged with Katrina-related invoices, FEMA processed the Invoice as having been correctly submitted, and paid it in full by wire transfer to Defendant Lighthouse Disaster Reliefs bank account. Had officials at the United States known that Defendants had billed for work not yet performed, they would not have authorized such payment.

31. In late January of 2006, auditors discovered the erroneous payment during an audit and referred this matter to the Office of Inspector General for investigation.

E. The Consequences of Defendants' Failure

32. Due to Defendants' failure to perform their promises under the Contract, FEMA could not route the full complement of first-responders to Defendants' camp. Thus, Defendants, at best, performed forty percent of the Contract's requirements, while being paid the entire contract price. Further, Defendants performed none of their contractual obligations to feed and house rescue workers during the first thirteen days of the Contract's performance period, yet allowed FEMA to pay them as if they had.

33. Due to Defendants' poor performance, their contract with FEMA was not renewed. FEMA had to find and retain another contractor to take over the base camp contract and perform the duties Defendants should have performed.

34. The new contractor told FEMA that Defendants left their camp "in chaos," and that they "never completed the job." Upon information and belief, the Defendants' poor performance increased the cost to the United States because it had to pay more to the new contractor to get the camp up to a level of adequate function.

FIRST CAUSE OF ACTION
Breach of Contract

35. The United States repeats and realleges each allegation set forth above in paragraphs 1 through 34 as if set forth fully herein.

36. By reason of the foregoing facts, the Defendants breached their contract with the United States.

37. The breaches were material and the United States has been damaged by the Defendants' breaches, and is entitled to damages in an amount to be determined.

SECOND CAUSE OF ACTION
Unjust Enrichment

38. The United States repeats and realleges each allegation set forth above in paragraphs 1 through 3 as if set forth fully herein.

39. By reason of the foregoing facts, the Defendants have been unjustly enriched at the expense of the United States, and the circumstances are such that in good conscience the monies paid should be returned to the United States.

40. Accordingly, the United States is entitled to recover the amount by which Defendants were unjustly enriched.

THIRD CAUSE OF ACTION
Payment Under Mistake of Fact

41. The United States repeats and realleges each allegation set forth above in paragraphs 1 through 36 as if set forth fully herein.

42. Because of the Defendants' acts the United States paid monies based upon the mistaken belief that the claim had been submitted appropriately and in compliance with the terms of the Contract.

43. Had the United States known the true facts, it would not have paid the monies.

44. By reason of its mistake of fact, the United States is entitled to restitution in an amount to be determined.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that judgment be entered in its favor and against Lighthouse Disaster Relief, Gary Lee Heldreth, and Kerry Lynn Farmer, Defendants, jointly and severally, as follows:

(a) on Count I (Breach of Contract), judgment against the Defendants and damages in an amount to be determined.

(b) on Count II (Unjust Enrichment), judgment against the Defendants and restitution in an amount to be determined.

(c) on Count III (Payment Under Mistake of Fact), judgment against the Defendants and restitution in an amount to be determined.

(d) On all Counts, for an accounting of the Defendants' spending of the amount received as payment under the Contract.

(e) On all Counts, for a constructive trust in which the proceeds of the Contract payment be placed pending determination of the Parties' rights.

(f) Further, that the United States be granted such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

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Dated: 2/24/06